

CO-PUBLISHING AND FULFILLMENT AGREEMENT

This Agreement is made, as of January 7, 2016 (the "Effective Date") by and between Cengage Learning, Inc., 5 Maxwell Drive, Clifton Park, NY 12065 ("CL") and the Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University, 1151 S. Forest Ave., Tempe, AZ 85281 ("ASU").

WHEREAS, ASU and CL desire to incorporate certain content, as hereinafter provided, into a course as provided in exhibits attached hereto and made a part hereof (the "Course"), and provide the Course to ASU's students and non-ASU students and share in the revenue therefrom;

WHEREAS, CL has developed and owns certain educational content (the "CL Content") and ASU is developing content for the Course ("ASU Content"); and

WHEREAS, ASU and CL desire to work together to build and distribute the Course on the terms and conditions hereinafter contained,

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein, the parties hereto agree as follows:

ARTICLE I - LICENSE GRANTS:

- 1.1 CL Content.** CL, while retaining all rights, including copyright, to the CL Content, hereby grants to ASU, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable, limited license to (a) incorporate the CL Content into the Course to be used on Cengage's platform to be powered by Knewton Inc.'s adaptive learning technology (the "Platform"); and (b) distribute the Course as hereinafter provided. ASU shall make no other use of the CL Content.
- 1.2 ASU Content.** ASU, while retaining all rights, including copyright, to the ASU Content, hereby grants to Cengage, during the term of this Agreement, a non-exclusive, nontransferable, non-sublicensable, limited license to (a) incorporate the ASU Content into the Course to be used on the Platform; and (b) distribute the Course as hereinafter provided. CL shall make no other use of the ASU Content.
- 1.3 The Course.** The Course shall be distributed, as provided on Exhibit B attached hereto and made a part hereof, to students, faculty and administrators of ASU and students, faculty and administrators of non-ASU educational institutions (collectively, "End-Users").

ARTICLE II – DUTIES OF CL AND ASU:

- 2.1 Course Development.** CL and ASU shall mutually agree on the Content to be included in the Course, the design of the Course and subject matter experts ("SMEs") for

development of the Course. Each time the parties have agreed upon the Content and SMEs, the parties shall enter into an exhibit to this Agreement, each to be numbered Exhibit A-1, A-2, etc. which shall contain the list of the Content, work to be performed, other duties of the parties and the Course to result, as well as a schedule for the work to be performed. Each exhibit shall be attached hereto and governed by this Agreement. CL and ASU shall mutually agree on a cycle for reviewing and updating the Course.

2.2 CL Duties. CL, at its expense, shall bear the capital costs of deploying the Course at ASU, including the provision of CL products and offerings (including software) necessary for the desired rollout, deployment and use, as well as the industry standard level of service necessary to support such Course. In particular, CL shall handle/provide (at no cost to ASU, unless otherwise agreed):

- a. Project Management: CL shall provide project management for the rollout and ongoing support to ASU as needed. CL shall provide one (1) main project management resource, to work as a partner to ASU's project manager, to coordinate deployment, provide support and serve as a resource for training. It is understood that this will need to be a dedicated resource during rollout and other designated times when necessary.
- b. White –glove support and customer service (done remotely if needed) to manage the Course deployment.
- c. CL and ASU shall mutually provide training for ASU faculty on the use of the Course upon wide scale adoption, to be agreed upon by the parties, at ASU.

2.3 ASU Duties. ASU shall handle/provide (at no cost to CL):

- a. Instructional design, and project management support to help with instructional design, evangelizing, developing marketing strategies, participating on milestone conversations and managing overall deliverables with CL and Knewton, Inc.
- b. Faculty experts on content and instruction.
- c. Supporting research on the pedagogical and other measurable benefits of the Platform at ASU.

2.4 Joint Duties. Instructional lessons shall be mutually agreed upon by ASU and CL. CL and ASU shall mutually agree on other responsibilities associated with the development of the Course including work to be performed, other duties of the parties and the Course to result, as well as a schedule for the work to be performed.

ARTICLE III – REVENUE SHARING AND PAYMENT TERMS:

3.1 Revenue Sharing. In consideration of the License granted hereunder, the revenue from distribution of the Course shall be shared and payment shall be made as provided on Exhibit B.

ARTICLE IV - INTELLECTUAL PROPERTY:

- 4.1 CL Proprietary Interest.** ASU acknowledges and agrees that CL has proprietary rights in and to the CL Content, to the Course to the extent that CL Content is incorporated therein, and to the Platform, and that CL owns all right, title and interest thereto including all intellectual property rights associated therewith. ASU shall not, by virtue of this Agreement or by virtue of its access to the CL Content, obtain any proprietary rights in or to the CL Content except the rights specifically granted to ASU herein. ASU shall not use or transmit the CL Content in any manner except as specifically authorized by this Agreement. CL shall ensure that it has obtained all necessary permissions and/or copyright ownership in and to all CL Content.
- 4.2 ASU Proprietary Interest.** CL acknowledges and agrees that ASU has proprietary rights in and to the ASU Content and to the Course to the extent that ASU Content is incorporated therein, and that ASU owns all right, title and interest thereto including all intellectual property rights associated therewith. CL shall not, by virtue of this Agreement or by virtue of its access to the ASU Content, obtain any proprietary rights in or to the ASU Content except the rights specifically granted to CL herein. CL shall not use or transmit the ASU Content in any manner except as specifically authorized by this Agreement. ASU shall ensure that it has obtained all necessary permissions and/or copyright ownership in and to all ASU Content.
- 4.3 Cessation of Use.** Each party agrees and covenants to cease to reproduce, market and distribute the other party's Content, or portions thereof, and the Course, or portions thereof, immediately upon written notice from the other party in the event that the other party (a) ceases to have sufficient rights in the applicable Content to grant the rights granted under this Agreement, (b) is required by judicial or governmental order to cease or suspend publication of such Content, or (c) decides in its reasonable judgment to cease or suspend distribution of such Content due to a threat of legal action or liability.
- 4.4 Copyright Notice.** When making the Course available to End-Users as permitted by this Agreement, the Course shall contain a notice comprised of the following elements to be conspicuously displayed to protect each party's intellectual property rights: (a) the word "Copyright" or the symbol © (the letter c in a circle), (b) the year of first publication of such document as specified by the party which owns the Content, (c) the name of the copyright holder, and (d) the words "All Rights Reserved."
- 4.5 Trademarks.** Subject to the terms and conditions of this Agreement, each party hereby grants to the other party a non-exclusive, non-transferable, limited license to reproduce and display such party's trademarks, trade names and logos (collectively, "Marks") provided by such party to the other party hereunder solely for the purposes contemplated in this Agreement; provided, however, that neither party shall make any specific use of the other party's Marks without, prior to each specific use first obtaining such other party's prior written consent. Each party hereby acknowledges and agrees that all use of the other party's Marks shall inure to the benefit of the party who owns such Marks and shall not create any rights, title or interest in the other party; all Marks of the other party are, and shall remain, the sole and exclusive property of such other party; each party shall not hold itself out as having any ownership rights with respect thereto or, except as

specifically granted hereunder, any other rights therein; and each party shall cause to appear with any use of the other party's Marks any label or symbol reasonably required by such other party to preserve its rights in and to its Marks.

ARTICLE V – TERM AND TERMINATION:

- 5.1 Term.** The initial term of this Agreement shall commence on the Effective Date and continue through January 6, 2019. Thereafter, this Agreement shall renew automatically for two (2) one (1) year renewal periods, unless either party terminates this Agreement at the end of the initial term or either of the renewal periods by giving the other party written notice of termination at least sixty (60) days prior to the end of the initial term or the then current renewal period. The initial term and the renewal periods shall be referred to, collectively, herein as the “term” of this Agreement.
- 5.2 Failure to Perform.** Either party has the right to terminate this Agreement if the other party materially breaches any representation, warranty, covenant or agreement made by it hereunder or otherwise fails to perform any of its material obligations hereunder which breach or failure has not been cured within thirty (30) days after receipt of written notice of default from the non-breaching party (or such additional cure period as the non-breaching party may authorize).
- 5.3 Bankruptcy and Business Termination.** Either party may immediately terminate this Agreement upon written notice to the other party if the other party has a receiver or similar party appointed for all or substantially all of its property, is declared insolvent by a court of competent jurisdiction, ceases to do business, files a petition in bankruptcy or a petition is filed against it in bankruptcy, becomes the subject of any court or administrative proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within sixty (60) days, or makes an assignment for the benefit of its creditors.
- 5.4 Conduct Upon Termination.** Upon expiration or termination of this Agreement for any reason, each party shall immediately cease all use, distribution and sale of the Course and the other party's Marks, and each party shall promptly pay to the other party any fees or other payments due hereunder that have accrued but have yet to be paid at the time of the termination. Notwithstanding anything contained herein to the contrary, in the event that this Agreement is terminated (except for an Exempted Termination (as defined below) and at ASU's option and expense, CL shall continue providing the services contemplated herein and providing End-Users access to the Course for sufficient time that all End-Users using the Course have completed their coursework for which fees have been paid, but in no event shall such period exceed six (6) months (the post termination services are referred to as the "Transition Services", and the period during which such Transition Services are provided are herein referred to as the "Transition Period"). Any fees for any Transition Services beyond what has already been paid for the Course shall be as agreed between CL and ASU, and shall be payable in full on the first day of the Transition Period. The Transition Services will be provided at least at the same

levels of quality and timeliness of performance as such services were provided prior to the termination, and in a professional manner, with high quality and in accordance with industry standards. CL represents that it will have the ability to provide such Transition Services. ASU may, upon written notice to CL, modify the specific Transition Services to be provided to a subset of the services provided under this Agreement and may reduce the term for the Transition Period to less than that specified above, provided that CL shall not be obligated to refund to ASU any fees paid by ASU nor shall ASU be relieved of any obligation to pay any fees accrued on or prior to the date this Agreement is terminated. The parties may also mutually agree in writing to extend the Transition Period, subject to the parties mutually agreeing on the fees to be paid by ASU for such Transition Services during such extended period. Upon termination of this Agreement, to the extent ASU elects to have CL provide Transition Services, the parties agree to work in good faith, at ASU's sole reasonable cost and expense, to effectuate an orderly transition of the services contemplated herein. As used herein, an "Exempted Termination" means either: (a) a termination of this Agreement by CL pursuant to Section 5.2 for a breach by ASU; or (b) a termination of this Agreement pursuant to Section 4.2 under circumstances where either (i) the provision of the Course has been or may reasonably be enjoined or (ii) the continued provision of the Course would expose either of the parties to monetary damages.

ARTICLE VI – WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY:

- 6.1 Warranty.** Each party represents and warrants to the other party as follows: (a) such party has full power, authority and rights to enter into this Agreement and to perform the obligations and/or to grant the licenses set forth hereunder; and (b) the execution, delivery and performance of this Agreement do not, and will not, conflict with or violate (i) any other agreement or instrument applicable to such party, (ii) any applicable law, rule or regulation, or (iii) any rights of a third party.
- 6.2 DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, CL MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONTENT OR THE COURSE, AND CL EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.
- 6.3 Limitation of Liability.** UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM BREACH OF THIS AGREEMENT OR ARISING FROM ANY OTHER PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS

ARTICLE VII – CONFIDENTIALITY

- 7.1 **Confidentiality.** Each party acknowledges that, from time to time, it may be exposed to certain information, which is the other party's confidential and proprietary information and not generally known to the public ("Confidential Information"). Each party agrees that it will take appropriate steps to protect the other party's Confidential Information from unauthorized disclosure, that it will not disclose such Confidential Information to any third party, and that it will not use any such Confidential Information other than as authorized by this Agreement, without the prior written consent of the other party. The term "Confidential Information" does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by the recipient or anyone to whom the recipient transmits the information, (b) becomes available to the recipient on a non-confidential basis from a source other than the disclosing party who is not bound by a confidentiality agreement with the disclosing party, (c) was known to the recipient or in its possession prior to the date of disclosure by the disclosing party, or (d) is independently developed by the recipient without reference to the Confidential Information of the disclosing party.

ARTICLE VIII – MISCELLANEOUS

- 8.1 **Publicity.** Neither party shall publicly use the other party's or each of its affiliates' name or Marks in any publicity, promotion, news release, website posting, announcement, client list, marketing materials or other disclosure or otherwise refer to the other party or its affiliates in any way in or with the media with respect to this Agreement or the transactions contemplated hereunder, unless such party has obtained the prior written consent of the other party in each case.
- 8.2 **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without reference to its conflict of laws principles which would require the application of the laws of another jurisdiction.
- 8.3 **Force Majeure.** Except for the obligation to make payments hereunder, neither party shall be liable for any delay or failure in performing its obligations hereunder if caused by a factor beyond such party's reasonable control, including, without limitation, acts of God, acts of terrorism, acts of government, fire or other casualty, provided the affected party makes every effort to promptly resume performance. In the event that the affected party cannot resume performance within thirty (30) days, then the other party may, without penalty or liability, terminate this Agreement upon written notice.
- 8.4 **Assignment.** Neither party may assign, sublicense or otherwise transfer (voluntarily, by operation of law, or otherwise) this Agreement, in whole or in part, or any right, interest, benefit or obligation under this Agreement, without the prior written consent of the other party. Any attempt to assign this Agreement other than in accordance with this Section shall be null and void.

- 8.5 Prevailing Terms.** Except for Exhibit C attached hereto and made a part hereof, in the event of a conflict between the terms and conditions set forth in the body of this Agreement and any attachment hereto, the terms and conditions of this Agreement shall take precedence over any conflicting terms and conditions in any attachment hereto, provided that if a particular attachment expressly amends by section a term of this Agreement, such amendment shall take precedence and be valid. The terms and conditions on the attached Exhibit C are part hereof.
- 8.6 Waiver.** The failure by either party to insist upon strict enforcement of any terms and conditions of this Agreement shall not be construed as a waiver of such right or of any other right hereunder.
- 8.7 Remedies Cumulative.** Except as expressly limited herein, the rights and remedies set forth hereunder are cumulative and in addition to any other remedies available at law or in equity.
- 8.8 Relationship of the Parties.** Nothing in this Agreement shall be construed to make either party the agent of the other for any purpose whatsoever; neither party is authorized to enter into any contract or assume any obligation for the other. Nothing in this Agreement shall be construed to establish a partnership, joint venture or employer-employee relationship between CL and ASU.
- 8.9 Headings.** The headings of the various sections of this Agreement have been inserted only for purposes of convenience; such headings are not part of this Agreement and shall not be deemed, in any manner, to modify, enlarge or restrict any of the provisions of this Agreement.
- 8.10 Notices.** Any and all notices and other communications to either party hereunder shall be in writing and deemed delivered (i) upon receipt if by hand, email (where expressly provided herein) or overnight courier and (ii) three (3) days after mailing by first class, certified mail, postage prepaid, return receipt requested, to the addresses set forth on the first page hereof or to such other address for a party as shall be specified by like notice.
- 8.11 Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.
- 8.12 Entire Agreement.** This Agreement and any exhibits, addenda and amendments hereto, constitute the entire understanding between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, whether oral or written, regarding such subject matter. There are no other understandings, agreements, representations or warranties relied upon by either party with respect to the subject matter herein, which are not included herein. This Agreement may be modified only in writing signed by both parties.

8.13 Survival of Obligations. Sections 5.4, 8.2, Articles IV, VI and VII, and all terms on Exhibits B and C for the periods provided for in Section 5.4 above, together with all provisions herein necessary or appropriate to interpret and enforce the same, will survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

CENGAGE LEARNING, INC.

By: Jul Espinoza

Printed Name: Jul Espinoza

Title: VP, Finance

ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE UNIVERSITY

By: _____

Printed Name: _____

Title: _____

8.13 Survival of Obligations. Sections 5.4, 8.2, Articles IV, VI and VII, and all terms on Exhibits B and C for the periods provided for in Section 5.4 above, together with all provisions herein necessary or appropriate to interpret and enforce the same, will survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

CENGAGE LEARNING, INC.

By: _____

Printed Name: _____

Title: _____

ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF ARIZONA STATE
UNIVERSITY

By:  _____

Printed Name: MARK SEARLE

Title: EXECUTIVE VICE PRESIDENT

AND
UNIVERSITY PROUST

EXHIBIT A

CL shall supply Content via materials including text, video, animations, and activities to support ASU's Courses: ECN 211 Macroeconomic Principles and ECN 212 Microeconomic Principles. CL shall deliver these materials through an online course management system that utilizes the Platform.

The underlying architecture and design of the Course system shall be completed by CL with input and guidance from ASU. In addition to the Content provided by CL, ASU may provide ASU -provided materials as desired by the parties.

ASU shall supply personnel, as mutually agreed, to assist CL in the appropriate design and content selection for the Course.

Schedule:

ECN 211 Microeconomics Principles (Pilot)

11/14/16 – Delivery of V1 Course (ready for use in January '17 classes)

ECN 211/ECN 212 Macro/Microeconomic Principles (Full Delivery)

4/10/17 – Delivery of V1 Course (ready for use in Summer '17 classes)

EXHIBIT B

The price for each ASU student End-User to access the Course shall be one hundred dollars (\$100.00). During the period from **Spring 2017 through Spring 2018** (the “Pilot Period”), for every ASU student End-User who is enrolled in the Course as of each add/drop date for the Course, ASU shall charge each such ASU student End-User one hundred dollars (\$100.00). For each such sale, ASU shall retain twenty-one dollars (\$21.00) and shall remit seventy-nine dollars (\$79.00) to CL. Following the Pilot Period, for every ASU student End-User who is enrolled in the Course as of each add/drop date for the Course, ASU shall charge each such ASU student End-User one hundred dollars (\$100.00). For each such sale, ASU shall retain one dollar (\$1.00) and shall remit ninety-nine dollars (\$99.00) to CL. Thirty (30) days following each add/drop date of the Course, during the term of this Agreement, ASU shall submit a report to CL, including the number of ASU student End-User enrollments in the Course as of such add/drop date and the amount owed CL. ASU shall submit payment for such enrollments, to an address to be advised by CL, at the same time as ASU submits its report to CL.

Following are the numbers of anticipated ASU student End-User enrollments:

ECN 212 Micro Principles Pilot

Time Period	Spring 2017	Summer 2017	Fall 2017
Enrollments	75	150	750

ECN 211 Macro Principles Pilot

Time Period	Spring 2017	Fall 2017	Spring 2018
Enrollments		75	150

Following successful implementation during the pilot phase, enrollment will scale into several thousands for each course. The estimated enrollment is as follows. The enrollment numbers are contingent upon a the schedule listed in Exhibit A.

ECN 212

Spring 2018	Fall 2018	Spring 2019
2100	2000	2200

ECN 211

Fall 2018	Spring 2019	Fall 2019
2000	2100	2200

Following are the three methods of delivery and payment that shall apply:

1. ASU shall provide ASU student End-Users access to the Course via the Platform where the Course shall be hosted. ASU student End-Users shall have access to the Course for the first semester in which each such End-User takes the Course and up to two (2) subsequent semesters. If access is provided for a period beyond such period by ASU, ASU shall pay CL fifty dollars (\$50) for each additional semester.
2. Non-ASU adoption and direct purchase by student:
 - a. CL shall host the Course on CL's platform where students shall access the Course directly or via a link on the adopting school's learning management system ("LMS") for up to two (2) semesters;
 - b. CL shall create printed access codes ("PACs"), instant access codes ("IACs") or ePins, which the students may obtain from their institution, their institution's bookstore or CL's website;
 - c. Students shall pay \$100-150 for the Course via the adopting institution, the adopting institution's bookstore or the CL's website; and
 - d. CL shall pay ASU according to the provisions of Section 4 below.
3. Non-ASU adoption, course fee model:
 - a. CL shall host the Course on CL's platform where students shall access the Course directly or via a link on the adopting school's learning management system ("LMS") for up to two (2) semesters;
 - b. The adopting institution will notify CL of the total number of students enrolled in the Course after each semester's drop/add period ends;
 - c. The price to the adopting institution shall be \$100-150 per student;
 - d. CL shall bill the adopting school for the numbers of students so enrolled;
 - e. The adopting school will pay CL's invoice; and
 - f. CL shall pay ASU according to the provisions of Section 4 below.
4. CL shall pay ASU, at a location to be advised by ASU, for use of the Course by non-ASU End-Users as follows:

A revenue share of two percent (2%) on first time sales hereunder until a threshold of two hundred fifty thousand dollars (\$250,000) in sales for non-ASU End-Users is reached (0-\$250,000)

A revenue share of three percent (3%) on first time sales hereunder on the next two million (\$2,000,000) in sales for non-ASU End-Users (\$250,001-\$2,250,000)

- A revenue share of five percent (5%) on first time sales hereunder above \$2,250,000 in sales for non-ASU End-Users (\$2,250,001+).

- CL shall pay ASU a revenue share of two percent (2%) on business that was closed under this Agreement, the first time such business is renewed. Thereafter, shall be paid a revenue share of one percent (1%) shall be paid on all such renewable business at the time of renewal.

Funding and Support of Joint Development Project

In support of this Project, CL, at its expense, shall bear the capital costs of deploying the Active, Adaptive Psychology Course- Powered by the Mindtap at ASU, including the provision of CL products and offerings (including software) necessary for the desired rollout, deployment and use, as well as the highest-level of service expected from a strategic partner.

In particular, CL shall handle/provide (at no cost to ASU, unless otherwise agreed):

- Project Management: CL shall provide project management for the rollout and ongoing support to ASU as needed. CL shall provide one (1) main project management resource, who would work as a partner to ASU's project manager, to coordinate deployment, provide support and serve as a resource for training. It is understood that this will need to be a dedicated resource during rollout and other designated times when necessary.
- White –glove support and customer service (done remotely if needed) to manage ASU Adaptive Mindtap deployment

In support of the Project, ASU shall handle/provide (at no cost to CL):

- Instructional Design and project management support to help with (1) instructional design, evangelizing, developing marketing strategies, participating on milestone conversations and managing overall deliverables with CL and Knewton (2) supporting research on the pedagogical and other measurable benefits of the Mindtap Adaptive Psychology Platform at ASU.

In connection with the Project, CL and ASU shall each bear the costs of their respective personnel engaged in the Project. Except as set forth above, each party shall bear its own expenses relating to the project.

EXHIBIT C
ARIZONA STATE UNIVERSITY SUPPLEMENTAL TERMS AND CONDITIONS

To the extent any provisions of the foregoing contract with the Arizona Board of Regents, a body corporate, for and on behalf of Arizona State University (“ASU”) conflict with any of the provisions of this Exhibit, the provisions of this Exhibit will control. References to this “Contract” include the foregoing contract and this Exhibit. All provisions of this Contract that by their terms anticipate performance after the termination of this Contract, and all provisions necessary or appropriate to interpret and enforce such provisions, will survive termination of this Contract.

1. **Nondiscrimination.** The parties will comply with all applicable state and federal laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. **If applicable, the parties will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

2. **Conflict of Interest.** In accordance with Arizona Revised Statutes (“A.R.S.”) § 38-511, ASU may cancel this Contract within three years after the execution of this Contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Contract on behalf of ASU, at any time while this Contract or any extension thereof is in effect, is an employee or agent of any other party to this Contract in any capacity or a consultant to any other party with respect to the subject matter of this Contract.

3. **Arbitration in Superior Court.** In the event of litigation, as required by A.R.S. § 12-1518, the parties agree to make use of arbitration in all contracts that are subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.

4. **Records.** To the extent required by A.R.S. § 35-214, the non-ASU parties to this Contract (jointly and severally, “Entity”) will retain all records relating to this Contract. Entity will make those records available at all reasonable times for inspection and audit by ASU or the Auditor General of the State of Arizona during the term of this Contract and for a period of five years after the completion of this Contract. The records will be provided at Arizona State University, Tempe, Arizona, or another location designated by ASU on reasonable notice to Entity.

5. **Failure of Legislature to appropriate.** In accordance with A.R.S. § 35-154, if ASU’s performance under this Contract depends on the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then ASU may provide written notice of this to Entity and cancel this Contract without further obligation of ASU. Appropriation is a legislative act and is beyond the control of ASU.

6. **Weapons, Explosive Devices and Fireworks.** ASU prohibits the use, possession, display or storage of any weapon, explosive device or fireworks on all land and buildings owned, leased, or under the control of ASU or its affiliated or related entities, in all ASU residential facilities (whether managed by ASU or another entity), in all ASU vehicles, and at all ASU or ASU affiliate sponsored events and activities, except as provided in A.R.S. § 12-781, or unless written permission is given by the Chief of the

ASU Police Department or a designated representative. Notification by Entity to all persons or entities who are employees, officers, subcontractors, consultants, agents, guests, invitees or licensees of Entity (“Entity Notification Parties”) of this policy is a condition and requirement of this Contract. Entity further agrees to enforce this contractual requirement against all Entity Notification Parties. ASU’s policy may be accessed through the following web page: <http://www.asu.edu/aad/manuals/pdp/pdp201-05.html>.

7. **Confidentiality.** ASU is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Accordingly, notwithstanding any other provision of this Contract to the contrary, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

8. **Indemnification by ASU; Limitation.** ASU will indemnify and hold harmless Entity and its owners, officers, directors, members, managers, agents, employees or subcontractors for, from, and against any and all third party claims, actions, liabilities, damages, losses, or expenses actually incurred (including reasonable court costs, attorneys’ fees, and costs of claim processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by (i) the negligent acts or omissions of ASU; or (ii) failure to comply with any applicable law. ASU is a public institution and, as such, any indemnification, liability limitation, or hold harmless provision will be limited as required by Arizona law, including without limitation [Article 9, Sections 5 and 7](#) of the Arizona Constitution and A.R.S. §§ 35-154 and 41-621. Therefore, notwithstanding any other provision of this Contract to the contrary, ASU’s liability under any claim for indemnification is limited to claims for property damage, personal injury, or death to the extent caused by acts or omissions of ASU.

9. **Indemnification by Entity.** Entity will indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities, and its and their officials, agents and employees (collectively, “Indemnitee”) for, from, and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property to the extent caused, or alleged to be caused, by (i) the negligence, acts or omissions of Entity or any of its owners, officers, directors, members, managers, agents, employees or subcontractors; (ii) a breach of this Contract; or (iii) failure to comply with any applicable law. Entity will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, Entity waives all rights of subrogation against Indemnitee for losses arising from the services performed or deliverables provided by Entity under this Contract.

10. **Student Educational Records.** Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”). Entity will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from ASU or as otherwise provided by law. If this Contract contains a scope of work or any provision that requires or permits Entity to access or release any student records, then, for purposes of this Contract only, ASU hereby designates Entity as a “school official” for ASU under FERPA, as that term is used in FERPA and its implementing regulations. As such, Entity will comply with FERPA and will not make any disclosures of ASU students’ educational records to third parties without prior notice to, and consent from, ASU or as otherwise permitted by law. In addition, any access or disclosures of student educational records made by Entity or its employees and agents must comply with ASU’s definition of legitimate educational purpose, which definition can be found at: SSM 107-01: Release of Student Information (<http://www.asu.edu/aad/manuals/ssm/ssm107-01.html>). If Entity violates the terms of this section, Entity will immediately provide notice of the violation to ASU.

11. **Authorized Presence Requirements.** As required by A.R.S. § 41-4401, ASU is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A) (verification of employee eligibility through the e-verify program). Entity warrants that it and its subcontractors comply fully with all applicable federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A). A breach of the foregoing warranty will be deemed a material breach of this Contract that is subject to penalties up to and including termination of the Contract. ASU retains the legal right to inspect the papers of any contractor or subcontractor employee who works hereunder to ensure that the contractor or subcontractor is complying with the warranty stated above.

12. **Tobacco-Free University.** ASU is tobacco-free. For details visit www.asu.edu/tobaccofree.

13. **Information Security.** All systems containing ASU Data must be designed, managed, and operated in accordance with information security best practices and in compliance with all applicable federal and state laws, regulations and policies. In addition, systems must be managed so they are in compliance or are consistent with ASU's policies and standards regarding data usage and information security. To diminish information security threats, Entity will (either directly or through its third party service providers) meet the following requirements:

(a) **Access Control.** Control access to ASU's resources, including sensitive ASU Data, limiting access to legitimate business need based on an individual's job-related assignment. Entity will, or will cause the system administrator to, approve and track access to ensure proper usage and accountability, and Entity will make such information available to ASU for review, upon ASU's request.

(b) **Incident Reporting.** Report information security incidents immediately to ASU (including those that involve information disclosure incidents, unauthorized disclosure of ASU Data, network intrusions, successful virus attacks, unauthorized access or modifications, and threats and vulnerabilities).

(c) **Off Shore.** Direct services under this Contract will be performed within the borders of the United States. Any services that are described in this Contract that directly serve ASU and may involve access to secure or sensitive ASU Data or personal client data or development or modification of software for ASU will be performed within the borders of the United States. Unless stated otherwise in this Contract, this requirement does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of this Contract. This provision applies to work performed by subcontractors at all tiers and to all ASU Data.

(d) **Patch Management.** Carry out updates and patch management for all systems and devices in a timely manner and to the satisfaction of ASU. Updates and patch management must be deployed using an auditable process that can be reviewed by ASU upon ASU's request.

(e) **Encryption.** All systems and devices that store, process or transmit sensitive ASU Data must use an industry standard encryption protocol for data in transit and make efforts to use an industry standard encryption protocol for data at rest.

(f) **Notifications.** Notify ASU immediately if Entity receives any kind of subpoena for or involving ASU Data, if any third-party requests ASU Data, or if Entity has a change in the location or transmission of ASU Data. All notifications to ASU required in this Information Security paragraph will be sent to ASU Information Security at Infosec@asu.edu, in addition to any other notice addresses in this Contract.

(g) **Security Reviews.** Complete SSAE 16 or substantially equivalent reviews in accordance with industry standards, which reviews are subject to review and approval by ASU upon ASU's request. Currently, no more than two reviews per year are required.

(h) **Scanning and Penetration Tests.** Perform periodic scans, including penetration tests, for unauthorized applications, services, code and system vulnerabilities on the networks and systems included in this Contract at regular intervals in accordance with industry standards and best practices. Entity must

correct weaknesses within a reasonable period of time, and Entity must provide results of all tests to ASU upon ASU's request.

(i) ASU Rights. ASU reserves the right (either directly or through third party service providers) to scan and/or penetration test any purchased and/or leased software regardless of where it resides. **(j) Secure Development.** Use secure development and coding standards including secure change management procedures in accordance with industry standards. Perform penetration testing and/or scanning prior to releasing new software versions. Entity will provide internal standards and procedures to ASU for review and approval upon ASU request.

14. **Americans with Disabilities Act and Rehabilitation Act.** Entity will comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act, and all applicable federal regulations. All electronic and information technology and products and services to be used by ASU faculty/staff, students, program participants, or other ASU constituencies must be compliant with the Americans with Disabilities Act as amended and the Section 508 of the Rehabilitation Act of 1973. Compliance means that a disabled person can acquire the same information, engage in the same interactions, and enjoy the same services as a nondisabled person, in an equally effective and integrated manner, with substantially equivalent ease of use.

15. **Data Use and Ownership.** As between the parties, ASU will own, or retain all of its rights in, all data and information that ASU provides to Entity, as well as all data managed by Entity on behalf of ASU, including all output, reports, analyses, and other materials relating to or generated by the Services, even if generated by Entity as well as all data collected, extracted, or received through ASU's or Entity's use of the Services or Deliverables (collectively, the "ASU Data"). The ASU Data also includes all data and information provided directly to Entity by ASU students and employees, and includes personal data, metadata, and user content. The ASU Data shall be ASU's Intellectual Property and Entity will treat it as Confidential Information. Entity shall not use, access, disclose, or license or provide to third parties, any ASU Data, or any materials derived therefrom, except, in each case, as authorized in writing by ASU. Without limiting the generality of the foregoing, Entity may not use any ASU Data, whether or not aggregated or de-identified, for product development, marketing, profiling, benchmarking, or product demonstrations, without, in each case, ASU's prior written consent.

16. **Warranties.** Entity represents and warrants that: (i) all of the Services will be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training and experience for the type of Services they are assigned to perform; (ii) Entity will comply, and will be responsible for ensuring Entity Parties comply, with all applicable federal, state and local laws in the performance of the Services; (iii) Entity's performance of the Services will not result in a breach of any other Contract to which Entity is a party; (iv) Entity owns or has sufficient rights in and to all CL Content, and such CL Content will not infringe upon or violate any Intellectual Property of any third parties; (v) any software developed or delivered under this Contract by CL will not contain any viruses, worms, Trojan Horses, or other disabling devices or code.

17. **Insurance Requirements.** Without limiting any liabilities or any other obligation of Entity, Entity shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of Arizona, and rated at least A- VII in the current A.M. Best's, the minimum insurance coverage below.

Entity and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Entity, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. ASU in no way warrants that the minimum limits contained herein are sufficient to protect Entity from liabilities that might arise out of the performance of the work under this Contract by Entity, its agents, representatives, employees or subcontractors.

(a) **Minimum Scope and Limits of Insurance.** Entity shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability -- Occurrence Form.** Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$1,000,000
Fire Legal Liability	\$50,000
Each Occurrence	\$1,000,000

- A. The policy shall be endorsed to include the following additional insured language:
“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Entity.”
- B. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of Entity.

2. **Worker's Compensation and Employers' Liability** – statutory limits, as amended from time to time and in each case no less than the amounts specified below:

Worker's Compensation	
Employer's Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

- A. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of Entity.
- B. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor /Independent Contractor) form.

3. Technology/Network Errors and Omissions Insurance.

Each Claim	\$2,000,000
Annual Aggregate	\$4,000,000

Coverage to include:

- Hostile action or a threat of hostile action with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized access/unauthorized use of a computer system including exposing or publicizing confidential electronic data or causing electronic data to be inaccessible;
 - Computer viruses, Trojan horses, worms and other types of malicious or damaging code;
 - Dishonest, fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal or take electronic data;
 - Denial of service for which the insured is responsible that results in the degradation of or loss of access to internet or network activities or normal use of a computer system;
 - Loss of service for which the insured is responsible that results in the inability of a third party, who is authorized to do so, to gain access to a computer system and conduct normal internet or network activities;
 - Access to a computer system or computer system resources by an unauthorized person or an authorized person in an unauthorized manner;
 - Loss or disclosure of confidential information no matter how it occurs;
 - Systems analysis;
 - Software Design;
 - Systems programming;
 - Data processing;
 - Systems integration;
 - Outsourcing including outsourcing development and design;
 - Systems design, consulting, development and modification;
 - Training services relating to computer software or hardware;
 - Management, repair and maintenance of computer products, networks and systems;
 - Marketing, selling, servicing, distributing, installing and maintaining computer hardware or software; and
 - Data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.
- A. If the professional liability insurance required by this Contract is written on a claims-made basis, Entity warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning at the time work under this Contract is completed.

B The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

(b) **Additional Insurance Requirements:** The policies shall include, or be endorsed to include, the following provisions:

- A. Entity's insurance coverage shall be primary insurance with respect to all other available sources.
- B. Coverage provided by Entity shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. The State of Arizona, its departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by Consultant, even if those limits of liability are in excess of those required by this Agreement.

(c) **Notice of Cancellation:** With the exception of ten day notice of cancellation for non-payment of premium, any changes material to compliance with this Contract in the insurance policies above shall require 30 days written notice to the State of Arizona. Such notice shall be sent directly to Arizona State University, Risk Management, P.O. Box 876512, Tempe, Arizona 85287 and shall be sent by certified mail, return receipt requested.

(d) **Verification of Coverage:** Entity shall furnish ASU with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by ASU before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to Arizona State University, Risk Management, P.O. Box 876512, Tempe, Arizona 85287. The ASU project/contract number and project description shall be noted on the certificate of insurance. ASU reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

(e) **Subcontractors:** Entity's certificate(s) shall include all subcontractors as insureds under its policies or Entity will furnish to ASU separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

18. **Notices.** All notices and communications required or permitted under this Contract shall be in writing and shall be given by personal delivery against receipt (including private courier service such as Federal Express), or certified United States Mail, return receipt requested. All notices and communications shall be sent to the addresses set forth below or to such other address as the parties may specify in the same manner:

To ASU:

Office of the Provost
PO Box 877805
Tempe, AZ 85287
Attn: University Provost

With a copy to:

Purchasing and Business Services
PO Box 875212
Tempe, AZ 85287-5212
Attn: Chief Procurement Officer

To Entity:

Cengage Learning, Inc.
Maxwell Drive
Clifton Park, NY 12065
Attn: VP - Legal

Notices, if delivered, and if provided in the manner set forth above, shall be deemed to have been given and received on the date of actual receipt or upon the date receipt was refused. Any notice to be given by any party may be given by legal counsel for such party.

19. **Termination.** ASU may terminate this Contract with or without cause upon 30 days written notice to Entity. If this Contract is terminated, the University shall have no further obligations other than payment for services already rendered and for expenses previously incurred.

20. **Leased Employees.** Entity shall determine and inform ASU if any leased employees are retired members of the Arizona State Retirement System prior to the leased employee performing any work under this Contract.

21. **Governing Law and Venue.** This Contract will be governed by the laws of the State of Arizona without regard to any conflicts of laws principles. ASU's obligations hereunder are subject to the regulations/policies of the Arizona Board of Regents. Any proceeding arising out of or relating to this Contract will be conducted in Maricopa County, Arizona. Each party waives any objection it may now or hereafter have to venue or to convenience of forum.

22. **Responsibility.** Each party will be responsible for the negligence, acts and omissions of its employees and contractors when acting under such party's direction and supervision. Notwithstanding the terms of this Contract or any other document or agreement: (i) other than for employees and contractors acting under ASU's direction and supervision, ASU is not responsible for any actions of any third parties, including its students; and (ii) no person may bind ASU unless they are an authorized signatory of ASU, as set forth in PUR-202, which is at <http://www.asu.edu/counsel/manual/signatureauthority.html>.

23. **Background Checks.** To ensure the safety and security of ASU, Entity will conduct reference checks, background checks, and fingerprinting (Screenings) as and when required, on all persons employed or contracted by Entity who have physical contact with ASU students or staff in the performance of the work under this Contract or have access to students' or staff's personally identifiable information (each a "Covered Person"). The necessity and adequacy of the Screenings will be determined by the type of work each Covered Person will be performing under this Contract; at a minimum, within 90 days prior to a Covered Person commencing work under this Contract, Entity will conduct Screenings on such Covered Person as would be required if ASU were hiring the person. These minimum Screening requirements are set forth in ASU ACD 126 at <http://www.asu.edu/aad/manuals/acd/acd126.html> and ARS § 15-1649. During the term of this Contract, Entity will exclude from any direct participation in Entity's performance under this Contract, any dishonest, unethical, unreasonably dangerous, or otherwise unqualified person. Entity will maintain as part of the records Entity is required to maintain hereunder, all Screening information and all documentation relating to work performance for each Covered Person who

performs work hereunder. Entity will abide by all applicable laws, rules and regulations including the Fair Credit Reporting act and/or any equal opportunity laws, rules, regulations or ordinances.